IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

RCRev..No. 346 of 2007

RCA.148/2003 of PRL. DISTRICT COURT, THALASSERY
RCP.47/2002 of MUNSIFF COURT, THALIPARAMBA
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PETITIONER/APPELLANT/RESPONDENT:

MATTUMMAL SREEDHARAN,
S/O.C.RAMAN, VIJAYA HOTEL,
ERIPURAM P.O., PAZHAYANGADI,
KANNUR DIST.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS/RESPONDENT/PETITIONER:

PALLIVALAPPIL NAJMUNNISSA,
D/O.ABDULLA, EZHOME AMSOM,
ERIPURAM CHENGAL DESOM,
PAZHAYANGADI, KANNUR DIST.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

R.C.R.No. 346 of 2007

ORDER

Balakrishnan Nair, J.

The tenant is the revision petitioner. The respondent is the landlady. She claimed eviction under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The Rent Controller allowed the Rent Control Petition. The appellate authority affirmed the same. Hence, this revision.

2. The tenant is running a hotel in the building. The rent deed was executed on 11.3.1987. Initially, the rent was Rs.225/- and later it was enhanced to Rs.300/- per month. The landlady's husband is working in the Gulf. He proposes to come back and wants to start a business in Tiles and Marbles. Her husband is depending on her for a building for housing the business. He has got

experience and financial capacity to start the business. The landlady has no other building in her possession for starting the business. The tenant has got other businesses and income also. Even after repeated requests, when the tenant refused to vacate the building, the Rent Control Petition was filed.

3. The tenant resisted the application by filing a counter statement. He admitted the tenancy and rate of rent. According to him, the lease commenced about twenty five years back and the rent deed executed on 11.3.1987 was only a renewal of the existing lease arrangement. He denied the claim of bona fide need. He also refutes the claim of the landlady that her husband is dependent on her for a building to start the business. When the demand of the landlady for enhancement of the rent was not accepted, the Rent Control Petition was filed. It was only a ruse to evict him and lease out the building for higher rent. He is depending only on the income from the hotel for his livelihood. He

has no other building. No other building is available in the locality for shifting his business. Therefore, the tenant prayed for dismissal of the Rent Control Petition.

4. From the side of the landlady, she was examined as PW1 and Exhibits A1 and A2 were marked. The tenant got himself examined as RW1. As mentioned earlier, the Rent Controller upheld the claim of the landlady under Section 11(3) of the Act and the appellate authority affirmed the same.

5. The learned counsel appearing for the petitioner attacked the findings of the authorities below regarding bona fide need. According to the learned counsel, the need urged cannot be described as dire need and therefore, it does not satisfy the requirements of Section 11(3) of the Act. He, in support of the above submission, also referred to the deposition of PW1, quoted in paragraph 10 of the judgment of the appellate authority. According to the learned counsel, the above deposition would show that the landlady's husband is not capable of

running any business, as he is admittedly inflicted by many ailments. Further, her deposition would show that the need is not a present and existing need, but only an anticipated one.

6. Even if the landlady's husband is not keeping good health, he can manage the business by employing a Manager or other efficient workers. Ill health is not a ground, which prevents him from starting a business. Further, the landlady's husband cannot be asked to resign his job, come and wait till the building is vacated by the petitioner. He can come once the tenanted building is available for his use. So, the absence of the landlady's husband in Kerala will not make the need urged not a bona fide. The landlady and her husband can have a bona fide need, even though he is presently employed in Gulf. He can come and start the business once the premises are available. Going by the materials on record, the contention of the learned counsel for the petitioner cannot be accepted. We agree with the reasons and conclusions

of the appellate authority regarding the bona fide need. No other point was urged.

In the result, the revision fails and it is dismissed. The learned counsel for the petitioner prayed for some time to vacate the premises. Having regard to the facts of the case, the petitioner is granted six month's time from today to vacate the tenanted premises on condition that he files an unconditional undertaking before the execution court in the form of an affidavit, undertaking to vacate the tenanted premises within six months. The affidavit shall be filed within three weeks from today. Arrears of rent, if any, shall also be paid within one month from today. The rent payable from time to time shall also be paid till the building is vacated.

(K.Balakrishnan Nair, Judge)

21st November, 2007

(K.P.Balachandran, Judge)

tkv